IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**COMPANY PETITION NO.731 OF 2005**
**CONNECTED WITH**
**COMPANY APPLICATION NO.563 OF 2005**

In the matter of the Companies Act, 1956;

AND

In the matter of Petition under Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Reliance Industries Limited, a company incorporated under the Companies Act, 1956, and having its registered office at 3rd Floor, Maker Chambers IV, 222, Nariman Point, Mumba 400 021;

AND

In the matter of the Scheme of Arrangement between Reliance

Industries Limited, Reliance Energy Ventures Limited, Global Fuel Management Services Limited, Reliance Capital Ventures Limited and Reliance Communication Ventures Limited and their respective shareholders and creditors.

Reliance Industries Limited )
a Company incorporated under the )
Companies Act, 1956 and having )
its registered office at 3rd Floor )
Maker Chamber IV, 222, Nariman )
Point, Mumbai 400 021. ).. PETITIONER

Mr.I.M.Chagla, Senior Counsel, with Dr.Virendra Tulzapurkar, Senior Counsel, Mr.Virag Tulzapurkar and Mr.Arif Doctor i/b.Amarchand & Mangaldas & Suresh A. Shroff & Co. for the Petitioner.

Mr.C.J.Joy with Mr.R.C.Master and Mr.M.M.Goswami i/b.Dr.T.C.Kaushik for the Regional Director.

Mr.Jal S. Unwalla with Mr.Shailesh More for the Intervenor.

Mr.Ghanshyam R.Mehta with Mr.Bavesh R.Mehta, Objectors, present in person.

**CORAM : SMT. NISHITA MHATRE, J.**

**DATED: 9TH DECEMBER 2005**

**P.C.:**

. This Company Petition has been filed for

sanction of the Scheme of Arrangement between Reliance Industries Limited - the Petitioner Company and four other Companies, namely (i) Reliance Energy Ventures Limited, (ii) Global Fuel Management Services Limited, (iii) Reliance Capital Ventures Limited and (iv) Reliance Communication Ventures Limited.

2. The Petitioner Company is engaged in various businesses including (i) petrochemicals; (ii) refining; (iii) oil and gas; (iv) textiles; (v) coal based power generation; (vi) gas based power generation; (vii) financial services business including insurance business and (viii) telecommunications. The Petitioner Company has proposed a Scheme of Arrangement whereby the share capital and the assets of the Company relatable to the Divisions dealing with (i) Goal based power generation i.e. Coal Based Energy Undertaking; (ii) Gas based power generation i.e. Gas Based Energy Undertaking; (iii) Financial services including Insurance i.e. Financial Services Undertaking and (iv) Wireless & Wireline Telecommunication Services i.e. Telecommunication Undertaking will be diverted to the aforesaid four Companies which are the resulting Companies. These Companies are presently wholly owned subsidiaries

of the Petitioner Company. The Petitioner Company has proposed a Scheme of Arrangement whereby each resulting Company would issue shares after which the resulting Companies will cease to be subsidiaries of the Petitioner Company. The Petitioner Company has proposed the demerger of its Coal Based Energy Undertaking, Gas Based Energy Undertaking, Financial Services Undertaking and Telecommunication Undertaking under the Scheme of Arrangement to be effected under Sections 391 to 394 of the Companies Act, 1956. According to the Petitioner Company, the demerger complies with the provisions of Section 2(19AA) of the Income Tax Act, 1961. The salient features of the Scheme are as follows :

(i) All the properties of the Demerged Undertakings transferred by the Petitioner Company immediately before the demerger become the properties of the respective Resulting Companies by virtue of the demerger;

(ii) All the liabilities relatable to the Demerged Undertakings being transferred by the Petitioner Company, immediately before the demerger become the liabilities of the respective Resulting Companies by virtue of the demerger;

(iii) The properties and the liabilities, if any, relatable to the Demerged Undertakings being transferred by the Petitioner Company are transferred to the respective Resulting Companies at the values appearing in the books of account of the Petitioner Company immediately before the demerger;

(iv) Each of the Resulting Companies issues shares to the shareholders of the Petitioner Company (except certain Specified Shareholders) in consideration of the demerger on a proportionate basis;

(v) All shareholders of the Petitioner Company (except certain Specified Shareholders) shall become the shareholders of each of the Resulting Companies by virtue of the demerger; and

(vi) The transfer of the Demerged Undertakings will be on a going concern basis.

3. By an Order of 16th September 2005 passed in Company Application No.563 of 2005, requisite directions were issued by this Court to convene separate meetings of its equity shareholders (except certain specified shareholders), secured creditors (including debenture holders) and unsecured creditors. These meetings were to be convened under the Chairmanship of an independent person. Separate meetings of the equity shareholders, secured creditors and unsecured creditors were accordingly held on 21st October 2005. The Chairman's Reports of the meetings are annexed to the Petition. The Resolution accepting the Scheme of Arrangement between the Petitioner Company and its four wholly owned subsidiary i.e. the aforesaid Undertakings into four separate Companies was approved by equity shareholders constituting 99.81% of the members present and voting. These members who voted in favour of the

Scheme hold 99.9998% of the shareholding. The Scheme was, therefore, approved with an overwhelming majority by the equity shareholders. Fifteen members holding 1657 shares i.e. .0002% have voted against the Scheme. 587 votes representing 2118 equity shares were declared invalid. Similarly, an overwhelmingly large majority of secured creditors and unsecured creditors accepted the Scheme at their respective meetings held on 21st October 2005. The Chairman's Reports indicate that Objectors to the Scheme were given an opportunity to express their views at the meetings.

4. After filing the present Petition, notice of hearing of the Petition under Section 394A of the Companies Act, 1956 was advertised in two local newspapers. Objections have been received from Bharat Gunvantrai Mankad and Kalpesh Bharatkumar Mankad (hereinafter for the sake of brevity referred to as "the Mankads") who have raised objections at the meeting convened for shareholders. Objections have also been filed by Ghanshyam R. Mehta and Bhavesh R. Mehta (hereinafter for the sake of brevity referred to as "the Mehtas") to the Scheme of Arrangement.

5. The Mehtas have claimed that their interests would be vitally affected in the Suit filed by them against Reliance Telecom Ltd. for the recovery of Rs.50,00,00,000/- (Rupees Fifty Crores) before the Court of Civil Judge, Senior Division, Rajkot being Special Civil Suit No.34 of 2001. They are not the shareholders of Reliance Industries Limited-the Petitioner Company nor are they creditors of Reliance Industries Limited. Reliance Telecom Limited is an independent Company and not a subsidiary of the Petitioner Company. In my view, the objections raised by the Mehtas need not be considered at all since they are neither shareholders nor creditors of the Petitioner Company.

6. Many objections have been raised by the Mankads in their joint affidavit in reply to the Petition. However, when the Petition was heard, Mr.Unwalla appearing for them confined the objections to the following :

(i) Discrepancy in the Scheme of Arrangement circulated to the members and the one annexed to the present Petition.

(ii) Non-disclosure of material particulars

regarding the assets of the Petitioner Company and disclosures which are made in the Scheme are vague.

(iii) The latest financial position has not been disclosed to the Court which is a requirement of law.

7. The Apex Court in the case of *Miheer H. Mafatlal* vs. *Mafatlal Industries Ltd.*, **AIR 1997 SC 506**, dealt with the fairness of a Scheme of Amalgamation passed by a majority of the shareholders. One of the shareholders who was also a Director of the transferor Company had raised several objections to the Scheme. While considering the provisions of Sections, 391, 392 and 393, the Apex Court observed thus in paragraphs 28 and 28A :

> "....  On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the *ipse dixit* of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is

required to receive the imprimatur of a Court of law. No Court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the concerned company, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the concerned scheme placed for its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections 391 and 393 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members, as the case may be, even though they have not consented to such a scheme and to that extent absence of their consent will have no effect on the scheme. It can be postulated that even in case of such a Scheme of Compromise and Arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote."

"28-A. However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the

majority of the creditors or members or their respective classes have approved the scheme as required by Section 391 sub-section (2). On this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a Court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisor jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act which reads as under :

"392.(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company if--

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned

> under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.
>
> (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement".
>
> Of course this Section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operates. It is obvious that the supervisor cannot ever be treated as the author or a policy maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as *sui juris* with their open eyes and fully informed about the pros and cons of the Scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. The Court cannot, therefore, undertake the exercise of scrutinising the scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in their best commercial and economic interest by majority agree to give green signal to such a compromise or arrangement. The aforesaid statutory scheme which is clearly discernible from the relevant provisions of the Act, as seen above, has been subjected to a series of decisions of different High Courts and this Court as well as by the Courts in England which had also occasion to consider schemes under *pari materia* English Company Law."

8. The Apex Court has then succintly outlined the broad framework within which the Company Court

should function while sanctioning a Scheme under the aforesaid Sections. These are as follows :

(1) The sanctioning Court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1) have been held.

(2) That the scheme put up for sanction of the Court is backed up by the requisite majority vote as required by Section 391, sub-section (2).

(3) That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

(4) That all necessary material indicated by Section 393(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391, sub-section (1).

(5) That all the requisite material contemplated by the proviso to sub-section (2) of Section 391 of the Act is placed before the Court by the concerned applicant seeking sanction for such a scheme and the Court gets satisfied about the same.

(6) That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the Scheme with a view to be satisfied on this aspect, the Court, if necessary, can pierce the veil of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

(7) That the Company Court has also to satisfy

itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purported to represent.

(8) That the scheme as a whole is also found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

(9) Once the aforesaid broad parameters about the requirement of a scheme for getting sanction of the Court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed. The Court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the Court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

However, the Court has cautioned that the aforesaid parameters are not exhaustive but broadly illustrative of the contours of the Company Court’s jurisdiction.

9. A perusal of this judgment indicates that the role of a Company Court in sanctioning a Scheme of Arrangement is only supervisory. The Company Court does not exercise an appellate jurisdiction in such

matters.. Therefore, while considering the objections raised to the Scheme, it would be appropriate to bear in mind the contours or parameters set by the Apex Court in the case of *Mafatlal* (supra).

10. As regards the first objection in respect of the discrepancy between the Scheme annexed to the Petition and the Scheme furnished to the shareholders, the learned Counsel for the Petitioner Company admits that there are certain omissions in the Scheme annexed to the Petition. However, he prays that the Petitioner Company be permitted to amend the Petition in order to insert the missing statements. He further submits that the omissions in the Scheme annexed to the Petition are not fatal to the Petition.

11. It is obvious that certain statements made in the Schedules to the Scheme have been omitted in the Scheme of Arrangement annexed at Exhibit "K" to the Petition. For instance, Part "A" of Schedule I of the Scheme issued to the shareholders, contains a statement "And such other properties as may be agreed between the Demarged Company and the Coal

Based Energy Resulting Company". This statement does not find place in Schedule I to the Scheme found at Exhibit "K" to the Petition. Similarly, in Schedule II, there is an omission to complete the statement "Other Fixed Assets of the Gas Based Energy Undertaking" in Exhibit "K". Further discrepancies have arisen in Schedule III and Schedule IV. These omissions in my opinion are not fatal to the Petition. The Scheme which was circulated to the shareholders and other groups did contain these statements. They have voted on the Scheme as circulated. Apart from this, the Petitioner Company has tendered draft amendments which are allowed on 8th December 2005 and accordingly amendments have been carried out.

12. The learned Counsel for the Objectors Mr.Unwalla then submitted that there is non-disclosure of material facts relating to the assets, loans and advances. According to him, such facts which are disclosed, are vague. The learned Counsel fairly accepts the book value of the assets mentioned in each of the Schedules. However, he submits that it was necessary for the Petitioner Company to indicate the methodology adopted by it to arrive at these figures. He has also stated

that although certain assets of the new Companies have been mentioned in the Schedules, there is a vague statement made that other properties or assets agreed to between the demerged Company i.e. the Petitioner Company and the resulting Companies would form assets of the resulting Companies. A statement is made by Mr.Chagla, learned Counsel for the Petitioner Company, on instructions, that there has been no transfer of assets after the appointed date i.e. 1st September 2005. All assets have been transferred before that date as stated in the Schedule. There has been no addition in the assets which are transferred after 1st September 2005, according to the learned Counsel. He urges that there is sufficient disclosure of the assets as well as liabilities. In my view, the objection is untenable as all the material facts have been disclosed. Apart from this, there is no prejudice which would be caused to the Objectors. The contention that the Petitioner Company and the resulting Companies would be able to swap assets in future to the prejudice of the shareholders also is unsustainable. Once the Scheme is sanctioned by the Court, it would not be possible to transfer the assets and liabilities except by following due process of law. All transfers which have taken place prior to the appointed date have been

reflected in the Schedules.

13. The third contention raised by the Objectors is that the latest financial position has not been disclosed since the unaudited segment information to the quarter/half year ended 30th September 2005 has not been disclosed in the Petition. The learned Counsel for the Petitioner Company submits that the requirement of law is that the unaudited accounts are to be simultaneously submitted to Securities Exchange Board of India (SEBI), the Stock Exchange and released to the newspaper publications. The Petition was filed on 24th October 2005, whereas the unaudited accounts were published on 27th October 2005 and, therefore, it was not possible to include the unaudited accounts for the quarter year ended 30th September 2005 in the Petition. In my view, the objection raised is unsustainable. The proviso to Section 391(2) of the Companies Act, 1956 does stipulate that the latest financial position is to be disclosed to the Court while proposing a Scheme of Arrangement. However, at the same time it is necessary for the Company to observe the rigours of other provisions of law, which necessitate the submission of the unaudited accounts simultaneously to the different

authorities including SEBI and the Stock Exchange while publishing the information at the same time in the newspapers. This was done on 27th October 2005. Since there is an embargo on the prior disclosure of unaudited accounts, it is obvious that the Company Petition filed on 24th October 2005 could not contain such information. Therefore, the submission of the learned Counsel for the Objectors on this count is unsustainable.

14. Several other objections have been raised by the Mankads in their affidavit filed on 28th November 2005; one of the main objections being that the Scheme was a family arrangement arrived at, to the prejudice of the shareholders. However, it is unnecessary for me to deal with those objections as the Objectors confined themselves to the aforesaid three-fold contentions.

15. Having considered the Scheme, as rightly pointed out by Mr.Dwarkadas, learned Counsel for the transferee Company i.e. Global Fuel Management Services Limited, which is the resulting Company in respect of the Gas Based Energy Undertaking of the Petitioner Company, the shareholders would not only

hold shares in the parent Company i.e. the Petitioner Company but also in each of the resulting Companies in the ratio of 1:1. The Scheme of Arrangement is fair and gives an opportunity to the shareholders to decide whether they wish to continue to be shareholders of one or more of the resulting Companies or of the parent Company alone.

16. In my view, keeping in mind the contours of the jurisdiction available to the Company Court while deciding a Petition under Section 391, the Scheme of Arrangement would have to be sanctioned. The objections raised are untenable. 99.81% of the shareholders have in their commercial wisdom accepted the Scheme. It is not for the Company Court to decide whether a better Scheme could have been proposed by the Company. The Objectors have been unable to indicate as to how the Scheme is unfair or how they would be prejudiced by the Scheme of Arrangement. In my view, as a whole, the Scheme of Arrangement is fair and reasonable from the point of view of the commercial decision taken by an overwhelming majority of the shareholders. The Scheme cannot be said to be against public policy. In fact, the Mankads are not really

objecting to the Scheme but are insisting that there should be a further and better disclosure of the material particulars. In my view, all the necessary particulars have been disclosed by the Petitioner Company in the Scheme of Arrangement and, therefore, the objections are without merit and are rejected.

17. The representative for the Regional Director of Companies states that the Petitioner Company and the resulting Companies would have to comply with certain provisions of law which the Petitioner Company has undertaken to do. The Regional Director has no objection to the Scheme of Arrangement being sanctioned.

18. Hence, the Company Petition is made absolute in terms of prayer clauses (a) to (h) subject to payment of costs to Regional Director of Rs.2,500/- (Rupees Two Thousand Five Hundred only).

19. All concerned parties including the concerned Registrar of Companies to act on the ordinary copy of the Order and Scheme annexed to the Petition, authenticated by the Company Registrar, High Court,

Bombay.

20. Filing of drawn up order is dispensed with.

21. Mr.More for the Objectors-Mankads seeks a stay of this order for six weeks. Mr.Chagla, learned Counsel appearing for the Petitioner Company, opposes.

22. In my view, there is no need to grant stay since the Objectors had candidly accepted the Scheme of Arrangement. Stay refused.